Telegram-Tribune Company *and* Telegram Tribune Editorial Employees Association. Case 31-CA-11257

24 February 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 12 April 1983 Administrative Law Judge Maurice M. Miller issued the attached decision. Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief[1] and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Telegram-Tribune Company, San Luis Obispo, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has requested oral argument. The request is denied as the record, exceptions, and brief adequately present the issues and the positions of the parties.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] In adopting the judge's finding of the Respondent's knowledge of Anderson's union activities, we agree with his reliance on an admission to that effect by Advertising Director Owens to an employee and on the information gained from Supervisor Dilbeck's interrogations of Anderson and other employees. We find it unnecessary to pass on his additional reliance on the small plant doctrine.

DECISION

STATEMENT OF THE CASE

MAURICE M. MILLER, Administrative Law Judge: Upon a charge filed on June 18, 1981, and duly served, the General Counsel for the National Labor Relations Board caused a complaint and notice of hearing, dated July 31, 1981, to be issued and served on the Telegram Tribune Company (Respondent). Respondent was charged, therein, with unfair labor practices, within the meaning of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended, 29 U.S.C. § 151, et seq. (the Act). Within its answer, duly filed, Respondent conceded certain factual allegations set forth within the General Counsel's complaint, but denied the commission of any unfair labor practices.

On July 13-16, 1982, a hearing with respect to this matter was held in Santa Maria, California, before me. The General Counsel, Respondent, and Telegram Tribune Editorial Employees Association (Association) were represented by counsel. All parties were afforded a full opportunity to present evidence, to examine and cross-examine witnesses, and to state their positions with respect to pertinent matters. Since the hearing's close, briefs have been received from the General Counsel and Respondent's counsel. These briefs have been duly considered.

On the record made herein, testimonial and documentary evidence received, and my observation of the witness, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, functioning as a California corporation, maintains an office and principal place of business in San Luis Obispo, within that State; there it engages in the business of publishing newspapers of general circulation. In the course and conduct of its business operations, Respondent annually carries national advertising valued at more than $5,000; Respondent derives gross revenues from its business operations, which exceed $200,000 yearly. Within its answer, Respondent concedes that it now, and has been—throughout the period material herein—an employer engaged in commerce and business activities affecting commerce, within the meaning of Section 2(6) and (7) of the Act, as amended.

II. THE LABOR ORGANIZATION CONCERNED

The Association is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act, which admits certain employees of Respondent to membership.

III. UNFAIR LABOR PRACTICES CHARGED

A. *Issues*

The General Counsel contends, herein, that Respondent's management representatives committed unfair labor practices when confronted with the Association's demand for recognition as the collective-bargaining representative of certain designated corporate employees. Specifically, his representative contends:

1. That Respondent, through its classified advertising manager, questioned employees subject to her supervision, with regard to their knowledge of the Association's organizational campaign and their participation therein.

2. That Respondent, through its advertising department director and classified advertising manager, threatened employees with regard to prospective changes in working rules, office procedures, and personnel practices, consequent upon their presumed interest relative to the Association's organizational campaign.

3. That Respondent's management terminated Margaret "Jill" Anderson, and has since failed and refused to

reinstate her, because of her presumed "involvement" with the Association's campaign.

Respondent contends, contrariwise: That Classified Advertising Manager Dilbeck's relatively innocuous questions, directed to several subordinates, did not reasonably tend to interfere with their free exercise of rights statutorily guaranteed, that various statements relative to Respondent's policies, chargeable to advertising department supervisors, were not coercive, but derived from business motives and constituted legitimate expressions of opinion; and that, since Respondent possessed substantial evidence with regard to Anderson's purportedly unsatisfactory work performance, and, further, lacked knowledge with respect to her professed role as the Association's protagonist, no determination would be warranted that her termination had been unlawfully motivated.

B. *Facts*

1. Background

a. *Respondent's business*

(1) Organization

Respondent's newspaper publishing operation functions with two primary departments. The paper's news department, or editorial department, is headed by George Brand, editor. The business side of the newspaper enterprises, however, functions under the separate supervision and control of Lawrence Blakeslee, the firm's business manager.

Under Blakeslee, Respondent's advertising department, with which we will be particularly concerned, functions with three principal divisions: classified advertising, display advertising, and dispatch, specifically.

The classified advertising division, as the name implies, handles relatively short lineage classified advertisements; the firm's retail or display advertising division handles larger advertisements normally placed by commercial enterprises. (The functions of Respondent's dispatch division will be found discussed, tangentially, within the record; for present purposes, however, they need not be described in detail.)

Within the classified advertising division, employees provide coordinated services in three functionally related sections. So-called outside sales personnel call on community business enterprises and solicit advertisements. Employees serving within the division's designated "phone room" take telephone calls and transcribe advertisements placed by private parties; they may, however, likewise take some commercial calls. Throughout the period with which this case is concerned, the division's "copy control" clerk collected or received various advertisement "insertion" orders prepared by Respondent's outside sales and phone room representatives; she was responsible for their delivery or transmission to Respondent's composing room, where the advertisements placed would be set in type, for subsequent printing and publication.

(2) Supervision

Throughout the period with which this case is concerned, Steve Owens functioned as Respondent's advertising department director; his direct subordinate, Patricia Dilbeck, held the classified advertising division's managerial post. Ray Kuentzel was, then, manager of Respondent's display advertising division. When this case was heard, the parties stipulated that—throughout the period now in question—both Owens and Dilbeck held supervisory positions within the meaning of Section 2(11) of the statute. I so find.

During May 1981, when various developments—considered pertinent in connection with the various matters now under consideration—occurred, Classified Advertising Manager Dilbeck supervised a personnel complement which compassed some 13 employees. However, when this case was heard, there were—because of a general business decline—some six people, merely, providing services subject to her supervision.

b. *The history of self-organization within Respondent's employee complement*

(1) Editorial department

During September 1980, the Association commenced a drive to win representative status within Respondent's editorial department. Upon a petition for certification subsequently filed, the Board's Regional Office conducted a January 1981 representation election, which the Association won with a substantial majority.

Thereafter, between March and December 1981 some 20 negotiating sessions with Association spokesmen and Respondent's representatives participating were conducted; no contractual consensus, however, was reached.

Sometime during 1981's fall months, when these negotiations were producing no results, Respondent's editorial department employees sought contacts with the Retail Clerks Union, soliciting representation by that organization. The Retail Clerks did, thereupon, seek representation rights with respect to Respondent's complete employee complement, save for mail and pressroom workers. Designation cards were distributed, and a January 1982 representation vote, to be conducted by the Board's Regional Office, was scheduled. The Retail Clerks' petition for certification, however, was subsequently withdrawn.

Thereafter, certain of Respondent's employees communicated with International Printing and Graphic Communications Union representatives, with regard to their representation. Ultimately, following a hearing to determine the scope of the bargaining unit concerned, a representation vote, to be conducted by the Board's Regional Office, was scheduled for July 15, 1982; the bargaining unit involved, however, did not compass Respondent's classified or display advertising personnel—the particular group with which the present case is concerned.

(2) Advertising department

Previously, during May 1981, Association representatives had spoken to certain employees, within Respondent's classified and display advertising divisions, with

regard to their possible representation. An organizational drive was initiated; in late May, two meetings with advertising department personnel present were conducted. Authorization cards were distributed, signatures thereon were solicited within Respondent's classified, ad service, and display advertising divisions.

At this time, some 20 or 22 nonsupervisory employees worked in Respondent's three advertising department divisions mentioned. Within a 4-day period, between May 26 and 29, 14 signed authorization cards were collected from these employees.

On Friday, May 29, the Association's counsel, within a letter directed to Editor George Brand, notified Respondent that a majority of the firm's employees within its display advertising, classified advertising, and dispatch division had designated that organization as their representative for collective-bargaining purposes. A June 5 meeting with management to negotiate a collective-bargaining agreement on their behalf was requested.

2. Respondent's reaction to the Association's recognition demand

a. *Interrogation regarding the Association's campaign for representative status*

The Association's letter demanding recognition, which had been dispatched on Friday, May 29, was received by Respondent's editor on Monday, June 1, 1981; he delivered it sometime that morning to Lawrence Blakeslee, Respondent's business manager.

(While a witness, Blakeslee claimed that, prior to this letter's receipt, he had been vouchsafed no "knowledge or indication" that any organizational campaign was taking place, within the advertising department divisions specified therein.)

Shortly after his receipt of the Association's letter, Blakeslee discussed its subject matter—so his direct testimony, responding to his counsel's leading question, shows—with either Advertising Department Director Owens, or Classified Advertising Manager Dilbeck, or both.

Summoned as Respondent's witness, Owens had testified, previously, that he was summoned to Blakeslee's office, *alone*, during June 1's midmorning hours; that he was then *told* about the Association's letter, but did not *see* it; and that, subsequently, he summoned Dilbeck and Display Advertising Manager Kuentzel to *his* office, where he *notified* them, orally, regarding the letter's receipt. Dilbeck said nothing, while a witness, regarding a June 1 morning conference with Blakeslee, anywhere, during which the Association's letter had been discussed; she could not recall whether Blakeslee had been in Owens' office. She testified, however, that she had been *shown* the Association's letter, while in the *advertising department director's* office, during their early morning June 1 conference, herein noted.

Whatever course Respondent's business manager may have pursued, there can be no doubt that within a short time following the recognition demand's receipt Respondent's concerned advertising department supervisors were properly notified regarding its purport.

(1) Constance Mooney

While a witness, Dilbeck conceded—several times—that she had been "shocked" and "surprised," "shaken" and "stunned," when notified regarding the Association's recognition demand. Within a few minutes thereafter—presumably sometime between 11 a.m. and noon—she encountered a classified advertising clerk, Constance "Connie" Mooney, while in Respondent's restroom; Dilbeck, so the record shows, initiated their conversation. According to Mooney, the classified advertising manager asked whether anyone had spoken to her regarding the Association's organizational campaign; she replied, merely, that she knew what was happening. Dilbeck then asked, so Mooney recalled, whether she had signed anything; when she replied negatively, her superior declared, "This is really bad. My God, you girls don't realize what is going to happen." Further, Dilbeck declared, so Mooney testified, that she had been in Blakeslee's office that morning; she reported—according to Mooney—that he [Blakeslee] had believed Employee Karen Boring was "behind" the Association's recognition demand. When queried with regard to Dilbeck's physical appearance and manner of speaking during their conversation, Mooney reported that she had been "shaking," that her fists had been "clenched," that her face had been "very tight and flushed," and that she had seemed visibly upset.

While a witness, Dilbeck purportedly recalled a somewhat shorter conversation with Mooney. She claimed that she had queried her subordinate, merely, with regard to whether she knew about Respondent's receipt of the Association's recognition demand letter. Dilbeck denied making any statements regarding a prior conference with Blakeslee, or his purported suspicions with regard to Karen Boring's possible role as the Association's principal protagonist. Further, she denied questioning Mooney regarding her knowledge of the Association's designation card signature campaign. However, within a summary written recapitulation of relevant events, which she prepared within 2 days thereafter, pursuant to Blakeslee's direction, Dilbeck had concededly reported that she asked Mooney whether she knew "that the Classified Department had signed, that they wanted to be represented" by the Association; she had reported further, therein, that Mooney said she had "heard" about it, but seemed evasive. Mindful of this, I find Dilbeck's present testimonial claim that her previously prepared summary's reference to "signing" dealt, merely, with her query regarding Mooney's knowledge relative to Respondent's receipt of Counselor Scott-Graham's recognition demand letter lacking in persuasive thrust. I have noted, in this connection, Dilbeck's witness-chair declaration that she did not know when the Association's May 29 letter was received that concerned employees were customarily requested to sign authorization cards, during organizational campaigns, to confirm their desire for collective-bargaining representation. The record, however, clearly reveals that she had—occasionally—discussed the Association's current representation of Respondent's editorial department employees with Blakeslee and possibly with other management representatives. Her witness-

chair professions of ignorance regarding the designation card procedure whereby the Association's majority representative status had previously been demonstrated, within my view, merit no credence.

Upon this record, I find Mooney's circumstantially detailed testimonial recapitulation, with respect to Dilbeck's restroom remarks, fully credible. Assuming, arguendo, that Respondent's classified advertising manager may—now—sincerely consider her proffered recollections regarding their conversation comprehensive and complete, I remain persuaded, nevertheless, that since her restroom exchange with Mooney took place, concededly, while she was considerably agitated, her present recollections with respect thereto understandably reflect little more than her honest, but limited memory, which cannot be considered completely reliable.

(2) Margaret "Jill" Anderson

Shortly following her restroom exchange with Mooney, Dilbeck likewise initiated a conversation with Margaret "Jill" Anderson, Respondent's copy control clerk, while Anderson was working at her desk. The classified advertising manager asked whether her subordinate had "heard" about the Association's recognition demand letter; Anderson responded affirmatively. Dilbeck then opined—so Anderson testified—that all "they" wanted was more money. The copy control clerk challenged this statement. According to her witness-chair recollection, she declared:

> . . . that as far as they wanted a pay scale, and that people—new employees would come into the plant and maybe start off as much as someone that had been working there for maybe two years—make the same amount of money. Also that the Display Sales people got more than—got paid more than Classified. And she said that was not true, and I said that the men got paid more than the outside sales [women] in Classified and she said that that was true . . . .

At this point, so Anderson testified, Dilbeck reported Blakeslee's belief that Outside Sales Representative Karen Boring was "behind" the organizational effort; she likewise asked Anderson whether she had signed anything. The copy control clerk declared that she could not answer that question; Dilbeck then suggested—very emphatically, Anderson recalled—that she should talk with Judy Sherley, a fellow employee who had worked with union representation while serving with another newspaper enterprise, who could "advise" her, before she did anything, with respect to Association representation.

Summoned as Respondent's witness, Dilbeck confirmed Anderson's testimony regarding her initial query; she testified that she had approached Anderson because she was "still curious," and wanted to know what was happening; the classified advertising manager substantially confirmed Anderson's recollection, further, that they had discussed Respondent's differentiated pay scales for male and female "outside sales" representatives; Dilbeck recalled that she had conceded the differentials, but reported that she had declared them premised on the greater "years of experience" which the male salesmen possessed. In this connection, Dilbeck declared:

> And at that time I said—*then I was beginning to get the idea that, you know, hey*. I said, Well they don't [get the same pay]. That's true. But the men have—all of them have years of experience . . . so they were paid more on the basis of their experience. [Emphasis added.]

The classified advertising manager purportedly recalled nothing further with regard to this conversation. For reasons previously noted, I find Anderson's proffered recollections—with respect to her superior's subsequent remarks—reliable, consistent with Dilbeck's conceded "curiosity" regarding the developing situation, and worthy of credence.

(3) Linda Nielsen

Respondent's outside sales representative, Linda Nielsen, had resumed work on June 1, following a 1-week period of illness. She was approached by Dilbeck, I find, sometime close to the noon hour.

(The record, considered in totality, will not warrant a definitive determination with respect to whether Dilbeck's contact with Nielsen preceded or followed her conversation with Anderson, previously noted.)

The classified advertising manager asked Nielsen whether she knew that the whole classified division had "signed" with the Association, and that Peter Kusar and Colleen Shannon, from display advertising, had likewise signed Association's cards. According to Nielsen, Dilbeck commented—with a "shaking" voice—that it would be bad for the salespeople to join a labor organization, because they would lose their bonuses, and their salaries could be "frozen" for up to a year; she added that she felt "like it was [done] behind her back," and was not a good thing.

While a witness, Dilbeck initially denied talking to Nielsen on June 1 or thereafter regarding the Association's campaign. When cross-examined, however, the classified advertising manager conceded that during a casual June 1 conversation she had, indeed, asked Nielsen whether she knew that Respondent had received the Association's letter, and that Nielsen had responded negatively. With due regard to Dilbeck's shifting recollection, Nielsen's circumstantially detailed recapitulation of their talk, within my view, merits credence.

Later that afternoon—so Nielsen credibly testified—she was present during a conversation between Dilbeck and Mike Perry, during which the display advertising employee proclaimed himself "upset" because his pending raise had apparently been frozen. Nielsen told Dilbeck that if the Association would be "bad" for Respondent's employees, they could not be forced to join it; she declared that she proposed to find out more about it. The classified advertising manager, I find, reiterated her suggestion that Nielsen should talk with Judy Sherley, who had belonged to a labor organization previously.

(4) Conclusions

Upon this record, Dilbeck's several conversations—whereby she attempted to elicit information regarding the knowledge of her subordinates, relative to the Association's organizational campaign, and their activities or sympathies relative to the Association's June 1 recognition demand clearly merit characterization as interference, restraint, and coercion, statutorily proscribed. Respondent suggests, within its brief, that the classified advertising manager's questions and statements should be considered "relatively innocuous" remarks, which, reasonably construed, possessed no tendency to interfere with, restrain, or coerce employees with respect to their free exercise of statutorily guaranteed rights. That suggestion, within my view, merits Board rejection. Dilbeck's patent agitation, during several conversations previously noted herein, plus her suggestive comment that her "girls" did not realize what was going to happen, were reasonably calculated to convey a message that Respondent's management was seriously disturbed, and would be likely to react in some adverse fashion. That implicit threat was made explicit, when the classified advertising manager subsequently told Nielsen that Respondent's salespeople "would" lose their bonuses, and that their salary levels "could" be frozen for possibly a year.

The rapidity with which Dilbeck's comment spread throughout Respondent's advertising department became evident when—later that same afternoon—Mike Perry, a display advertising worker, proclaimed himself upset because his proposed raise, which Respondent's management was, then, presumably considering, had been frozen.

Under these circumstances, there can be no doubt that Dilbeck's manner, her words themselves, and the context in which her questions and comments were proffered, combined to convey the impression of coercion or interference. See *NLRB v. J. Weingarten*, 339 F.2d 498, 500 (5th Cir. 1965). That Respondent's employees—several of whom responded evasively or remained silent—found them threatening cannot be questioned; the record reveals that a group of them met that very night, directly after work—with Association counsel present—precisely to consider Respondent's presumably negative reaction to their designated representative's recognition demand. That negative reaction, particularly manifested by Dilbeck's statements and her course of conduct, noted, merits Board interdiction.

b. *Respondent's threats to impose more onerous working conditions*

(1) The General Counsel's presentation

On Tuesday, June 2, Advertising Department Director Owens, with Dilbeck present, held several meetings with his departmental employees. They were, so the record shows, summoned in three discrete groups to his office. (Owens testified that he spoke to his departmental subordinates in separate groups because his office was not large enough to hold them all, at one time.)

Several departmental workers—Anderson, Nielsen, Karen Boring, and Mooney—testified with respect to what Respondent's management representatives said during these separately conducted sessions. Their cumulative testimonial recitals—though phrased somewhat differently, and presumably reflective of some differences derived from their attendance during separate meetings—provide a comprehensive, generally consistent, and mutually corroborative recapitulation, with respect to the pervasive tenor and proclaimed purport of Owens' remarks, together with Dilbeck's presumably supportive comments. Considered in totality, their composite testimony--substantially synthesized for summarization herein—would warrant determinations: *First*, that Owens declared himself "very hurt" and/or "upset" because his department's employees were seeking Association representation, and stated further that he was taking the situation "personally" since the employees were telling Respondent's head office, by their actions, that Dilbeck and he were poor managers; *Second*, that Dilbeck described the Association's recognition demand as something which had "hit her like a ton of bricks" while stating further that she could not understand why the employees wanted Association representation; *Third*, that Owens questioned those present, rhetorically, with respect to why they had not "come to him" directly to discuss their problems since he had always maintained a genuine "open door" policy.

At some point, Owens further commented—so Anderson and Boring testified—that contract negotiations for Respondent's editorial department workers, which had then been in progress for several months, were not "going" anywhere; that some polarization within the represented group, sufficient to generate a tense atmosphere, had developed; that six projected raises within Respondent's editorial department had been frozen; and that since his department's employees would get whatever Respondent's editorial department personnel would be getting he could not understand why they were seeking separate representation. During the meeting which Karen Boring attended, Steve Owens further declared, so she testified, that "some" departmental employees had told him they had been "pressured" to sign designation cards; that these employees had told him they had not been "sure" with respect to what they had signed; and that he, Owens, did not believe a majority of his department's employees had signed Association cards.

The General Counsel's witnesses, then, reported several pronouncements—most frequently by Owens, but sometimes by Dilbeck speaking in his stead—with respect to prospective changes in Respondent's work rules, personnel practices, and routine office procedures. Inter alia, these witnesses recalled managerial declarations:

(1) That they could no longer wear blue jeans while at work. This represented a reversal of Respondent's prior position; workers had been permitted to wear jeans, provided they were neat, clean, and well kept.

(2) That, when they might thereafter have doctor's appointments they would be required to present a note from the doctor—which would be kept in their personnel file—and would further be required to provide his

name, office location, and phone number, designate their appointment time, and report their anticipated return time. Respondent would deduct their time spent while absent for medical or dental appointments from their sick leave time. Previously, Respondent's workers had not been required to present doctors' notes; they had merely been expected to notify management representatives that they had doctors' appointments. Further, they had been permitted to make up whatever worktime they might have lost by reporting for work early, or by refraining from taking worktime breaks.

(3) That their "break time" allowances, while at work, would be shortened from a previously permitted 15 to 10 minutes.

(4) That employees would thereafter be required to sign out and in for breaks and scheduled lunch periods. They would no longer be permitted to leave Respondent's premises during nonworking time. Respondent had not previously maintained a sign-out, sign-in policy, and employees had been permitted to leave the newspaper's facility, so long as their period of absence did not exceed their defined nonworktime.

(5) That there would be no overtime work done, save when authorized by Respondent's management, and that management did not want employees working overtime.

(6) That departmental "outside sales" personnel would be required to call Respondent's office, twice daily, for messages. Salespeople had previously telephoned from the field on a discretionary basis.

(7) That sales meetings would be held at 4:45 p.m. every day thereafter. Previously such meetings had been held once each week.

(8) That advertising sales personnel would, thereafter, be required to set their own monthy quotas for advertising lineage sales, which would have to be fulfilled before they could qualify for bonuses; that bonus payments would not be promised after June; and that "dead head" records—wherein errors by salespeople related to the servicing of customer orders, were memorialized—would thereafter have to be prepared in duplicate. These requirements represented a departure from past practice.

During one meeting, Respondent's classified advertising manager declared—so Mooney testified—that departmental salaries would be frozen during any contract negotiations which might follow, and that such negotiations might take a year or longer. Mooney's fellow workers recalled—variously—that during the meetings which they attended they were told salaries "would" or "could" be frozen. According to Mooney, Dilbeck stated—further—that possible future raises would be frozen, and that raises previously approved by Director Owens, which had been submitted for Business Manager Blakeslee's concurrence, would not go through. Karen Boring, while a witness, recalled a comment by Owens that should the department's employees "get" unionized their wage scale would probably be lower.

When proclaiming Respondent's prospective changes in working rules, personnel practices, and office procedures, previously noted herein, Owens declared—so the General Counsel's witnesses reported—that such changes should not be considered punitive. Rather, they were being instituted, so Owens stated, because his department's employees had shown, by their "actions" presumably supportive of the Association's recognition demand, that they desired some "more businesslike structure" with respect to their jobs, and that—*for this reason*—management would, henceforth, enforce work "rules" which had not, previously, been enforced.

(2) Respondent's version

Summoned as Respondent's witness, Advertising Department Director Owens claimed that his primary purpose—during these June 2 meetings—had been to make clear Respondent's purpose to conduct "business as usual" while the Association's bid for recognition was pending. When queried by Respondent's counsel with respect to what he said, Owens testified, in material part, that:

> Well, I called the meeting to let them know . . . that we had received a letter from Elizabeth Scott-Graham stating that the entire Advertising Department would like to be represented by the TTEEA, and I told them that I was surprised and shocked . . . that they felt that they needed to have . . . someone represent them other than themselves, that I do not believe it . . . but that it is their own choice . . . Since this is a first for me, I stated that this is basically what I understand will happen: Number one, we received the letter: Number two, we informed them that we do not believe that there is a majority: Number four [sic] they called for some sort of an election. We have an election. And then the election decides whether they do—they are or they are not . . . And then went on to talk to . . . that I stated about seven or eight times throughout the morning that business was going to remain as usual. That was the exact line that I used. *And if it did not, things were going to—I was going to be as tough on them as they were going to be basically on me. I did not want any problems to arise . . . I went through a number of things that I wanted to make sure that we were—that we would be—abide by or things were going to get a little bit tougher.* [Emphasis added.]

Owens recalled, further, that he had indeed proscribed "faded" blue jeans; that he had declared "signing in and out" would be required; and that he had stated breaks would be 10 minutes as they "always" had been. The advertising department director claimed that he was "trying" to remember everything he had stated; during cross-examination, he conceded he "could" have said that the departmental complement's search for Association representation had indicated to him that they wanted more "structures" in their work.

Owens reported, while a witness, that—when he discovered, later that day, that breaks had "always" been 15 minutes long—he had rescinded his reference to 10-minute breaktimes.

Respondent's department head recalled statements that, while observing developments within the newspaper's unionized editorial department, he had noted "tense relations" between Respondent's management and con-

cerned employees, and had learned about some frozen salaries. Concededly, he had—then—queried his listeners, rhetorically, with respect to whether they would want their salaries frozen. Further, Owens recalled statements that—when bargaining takes place—bonuses "could" be eliminated, while salaries "could" rise or fall.

The department head testified that Dilbeck had professed a lack of certainty with respect to whether some "four, five or six" raises, which she was then prepared to recommend, would be processed further in view of the Association's recognition demand. While a witness, Owens reported that "right afterwards" they had learned that projected raises could be granted; he declared that the raises in question had, thereafter, been submitted for management's concurrence.

In summation, the departmental director characterized his June 2 staff conferences as "one of those revival-session type" things. He testified that he wanted his listeners to leave "with eyes about this big" so that they would refrain from doing "anything" likely to disrupt Respondent's normal business operations.

(3) Conclusions

Within his brief, Respondent's counsel suggests that various June 2 statements which Owens, seconded by Dilbeck, made to advertising department personnel during their several conferences—when viewed in their entirety—should not be considered coercive; counsel contends that they constituted nothing more than legitimate expressions of opinion and derived from business-related rather than antiunion motives.

Upon this record, however, Respondent's contentions carry no persuasion. Credible testimony, proffered by the General Counsel's several witnesses—which Owens and Dilbeck did flesh out with some supplementary recitals, but which, in material part, they failed effectively to controvert—clearly warrants a determination that Respondent's advertising department supervisors, in response to, and in retaliation for the demonstrated interest of their subordinates with respect to Association representation, proclaimed management's foreseeable determination to "freeze" departmental wage and salary levels, and detailed various changes which would be effectuated, presumably forthwith, concerned with restrictive work rules, personnel practices, and routine office procedures. Such pronouncements—which, within their situational context, may reasonably be considered "threats of reprisal" directed against employees who were seeking bargaining representation—have routinely been considered statutorily prohibited.

While a witness, Advertising Director Owens conceded that during these several meetings with his staff he had proclaimed himself surprised, shocked, and concerned about "problems" which might develop consequent upon the Association's drive for representative status and recognition. He conceded—further—that he had emotionally conducted "one of those revival-session type" gatherings calculated to "open [his listener's] eyes" so that they would be persuaded to refrain from conduct which would "disrupt" business. In this connection, Owens told his staff—so he testified—that if Respondent's business was not conducted normally, he would be "as *tough* on them as they were *going* to be" basically throughout their continued relationship with him. (Emphasis added.) He conceded that he "could have" stated, in substance, his view that the efforts of his department's staff in seeking Association representation had persuaded him they wanted more "structure" or business-like work relationships. With due regard for the credible testimony which the General Counsel's witnesses proffered, I find that he did state his belief that Respondent's employees had, somehow, demonstrated their desire for a more structured, that is, a more formalized and closely supervised, working environment.

Such comments proffered within the advertising department director's conceded "locus of authority" concurrently with his several announcements that more restrictive work rules, personnel practices, and routine office procedures would be enforced, or pursued thereafter were clearly calculated to convince his subordinates that Respondent's management was highy displeased with their search for collective-bargaining representation. Within her brief, the General Counsel's representative calls the June 2 declarations properly chargeable to Advertising Director Owens and Dilbeck, statements which revealed the "high degree of hostility" which these management representatives harbored toward employees who had chosen to exercise statutorily guaranteed rights. That characterization might conceivably be considered extreme; there can be no doubt, however, that both Owens and Dilbeck did reveal their distress, displeasure, and resentment, particularly with regard to their departmental complement's presumptive manifestations of support for the Association's recognition demand. Their June 2 pronouncements, I find, were reasonably calculated to convey suggestions of hostility and threats of reprisal; considered in context, they were neither proffered as statements of opinion, nor as business-related directives, purely and simply. The fact that some threatened changes may have been subsequently retracted or honored in the breach, cannot, within my view, detract from their character as clearly coercive threats when thrice propounded. Without regard to their possibly subsequent effectuation—which the General Counsel's representative has neither sought to prove, herein, nor charged as violative of the statute—the June 2 declarations of Respondent's management representatives, because of their reasonably foreseeable tendency to restrain and coerce Respondent's employees with respect to their exercise of rights statutorily guaranteed, clearly merit Board interdiction; I so find.

c. *The termination of Anderson*

(1) The General Counsel's presentation

(a) *Background*

Margaret "Jill" Anderson had been hired by Respondent in August 1977 for work as a classified advertising telephone clerk; she had resigned in June, 2 years later. During August 1979, however, she had been rehired, for work in Respondent's dispatch department. In November 1980, pursuant to her request, she had been designated Respondent's classified copy control clerk; her new posi-

tion—so the record shows—constituted a transfer to more responsible work.

While serving as Respondent's classified copy control clerk—between November 1980, and her termination date, noted subsequently herein—Anderson was responsible for a number of related clerical functions. Primarily, she participated in the transmission of classified advertisements—procured by several "outside" salespeople and telephone ad takers—to Respondent's composing room, where they were readied for printing and publication within the next day's paper. In that connection: Anderson was required to proofread advertisements submitted, checking their classification, correctness of contents, spelling and punctuation, and making corrections when necessary; she filed "insertion order" copies of those "active" advertisements which were currently being published, and refiled them as so-called dead ads when notified that they had been "killed" or that their scheduled period of publication had expired. When notified by classified advertising clerks that ads required correction or had been canceled, she was required to arrange for their correction or cancellation. She took telephone calls from advertisers with complaints or questions regarding the status of their ads, and conducted searches—when required—to facilitate her responses. She was required to list two-column advertisements and to visit Respondent's composing room for the purpose of removing copies of such ads from the paper, bring them upstairs, posting them on plastic sheets, filing them with their "insertion orders" when they were scheduled to run again, and filing them with other "dead" ads when they had expired. Further, she was—throughout most of her period of service—required to maintain a record of the measured advertising "lineage" which each of some 11 salespeople had sold, daily, for Respondent's publication.

Within her briefly interrupted, slightly less than 4-year period of service (1977-1981), Anderson received some "five or six" pay raises. Her penultimate raise—prior to her final hourly rate adjustment granted shortly before her termination—had been granted effective December 7, 1980, approximately 1 month after her transfer to Respondent's classified copy control desk.

At that time, Anderson had been given a raise of 40 cents per hour; her new rate had been set at $4.40 an hour. This raise, like Anderson's prior raises, had been designated a "merit increase" within Respondent's personnel records. According to Anderson, whose testimony I credit in this connection, Owens had told her he was "happy" with her job performance. While a witness, Dilbeck testified that all raises granted by Respondent were discretionary; that Respondent had no set policy regarding the scheduling of performance evaluations; that good performance evaluations did not necessarily lead to pay increases for Respondent's employees; and that "all" raises, when granted, were designated merit increases. Testifying subsequently, Owens denied that raises, when given, were based solely on merit; he declared that raises could be granted, rather, based solely on the given employee's length of service on the job and/or since his/her last raise. The department director's testimony, noted, contradicts his statement—within a court deposition previously given in connection with a civil matter—that Respondent's raises, when granted, would be based on job performance. Herein, Owens finally conceded, testimonially, that "better" job performance records by particular employees would result in their receipt of raises more often. The significance of this testimony—so far as Anderson was concerned—will be reviewed, subsequently, within this decision.

On May 24, 1981, less than 2 weeks before her termination—noted hereinafter—Anderson was granted a 25-cent-per-hour raise. The copy control clerk's testimony, which I credit, warrants determinations: That Dilbeck, during a brief April 1981 conversation in Respondent's building lobby, had declared her intention to propose a raise for Anderson because she had been doing a good job; that sometime early in May she (Anderson) had queried Dilbeck with respect to whether Owens had been spoken to regarding her possible pay increase; and that Owens, when telling her, shortly thereafter, about her raise, had likewise reported "they" were happy with the job she was doing. He added—so Anderson recalled—that, with Respondent's recently purchased computer available for greater utilization, she would have more responsibilities, which Respondent was "satisfied" she could handle.

Concurrently with her raise, Anderson was given a notice headed "Employment Understanding" which confirmed her engagement as Respondent's designated "Ad Service" clerk. Among other things, Anderson was advised, therein, that she was not to work overtime except by management's order; this directive, so the record shows, recapitulated Respondent's general instruction—routinely given to new employees within the detailed "Employment Information" sheet which they received when hired—that no employee was to work "in excess of the number of hours designated as his regular work week" save by order of Respondent's concerned department head.

Some time before Anderson's designated position change, and concurrent raise, Respondent had acquired a computer, with three video display terminal (VDT) consoles, which would take "punched in" classified advertisements and perform whatever functions might be required to prepare them—directly—for Respondent's daily press run. Throughout the month of May 1981, Respondent's classified advertising division—so Respondent's counsel, within his brief, correctly notes—was "still in the process of changing over" from a manual system whereby advertisements were personally solicited or received by telephone, transcribed in typewritten form, and finally routed or carried to the newspaper's composing room for required typesetting, prior to their reproduction and publication. One employee, Pat Grigg, was then primarily responsible for "punching in" advertisements for computer processing, using one of the firm's video display terminals. Grigg, however, was scheduled to leave for a week's vacation, which she planned to start on Tuesday, May 26, directly following the Monday, May 25, Memorial Day holiday. Early in May, Dilbeck had, therefore, notified Anderson that—during Grigg's scheduled vacation—she would be responsible for making sure that advertisements were "punched" into

Respondent's computer, functioning in Grigg's stead, if necessary while continuing to perform her regular "copy control" duties in connection with advertisements manually processed.

When advised with regard to what Respondent would require of her, functioning as Grigg's replacement, Anderson had not yet received any training or verbal instruction regarding computer operations; nor had she been afforded practice time, particularly with respect to those VDT functions which she would be required to perform. During the 3- or 4-week period which followed, however, she was given "approximately" three training sessions with Grigg, which—so Dilbeck recalled—covered, in toto, some "three or four" practice hours. Anderson was told that several other employees who were considered thoroughly familar with VDT functions and capabilities would be available to work with her, punching in advertisements, during Grigg's vacation period.

While a witness, Dilbeck claimed that she had "anticipated" the possibility that some overtime work might be required, with respect to VDT operations, during Grigg's absence. She testified that Anderson had been so advised. Further, Dilbeck reported that Anderson had been told she "could" work overtime without being required to request specific permission, during Grigg's vacation week. Anderson, when requested—previously during the hearing—to recapitulate her conversation with Dilbeck regarding her new assignment, had recalled no reference to possible "overtime" work requirements. And Dilbeck's testimony, in this connection, does reveal her concession that when she broached the subject of VDT work with Anderson, particularly, she had not "known" with certainty whether overtime services would be required. She conceded that Anderson had not been told she would be "vulnerable to discharge" should she fail to work overtime while Grigg was vacationing. Upon this record, I am satisfied that while Dilbeck may, indeed, have been cognizant of the possibility that Grigg's replacements might have to work overtime to get their day's work done during her absence the subject of possible overtime work had not been mentioned during her preliminary conversations with Respondent's copy control clerk.

When required to take over Grigg's VDT responsibilities, finally, Anderson was familiar with some VDT functions. There were several operations, however, which she could not perform; further, she concededly functioned with less speed, and less facility, than those coworkers, designated by Dilbeck, who had previously worked with video display terminals.

(b) *Anderson's contacts with the Association*

As previously noted, Monday, May 25, was a legal holiday; Respondent's advertising department employees were not required to work. Normal business activity, however, resumed on Tuesday, May 26. At some time during the day—not specified for the record—Anderson learned that Association representatives would meet that evening with a group of classified advertising division employees; their meeting place was being planned for a private residence. Anderson, who had previously discussed her division complement's possible readiness to consider self-organization with Association spokesmen, planned to be present. She told Judy Sherley, Respondent's ad service supervisor, so she testified, that she could not work overtime that evening because she had a doctor's appointment. Anderson's testimony, which compasses a confession—noted herein—that she misrepresented her reason for being unable to work overtime, merits credence, within my view.

Respondent contends, herein, that notices with regard to prospective absences from work, communicated to Sherley, could not—properly—be considered communicated to departmental or divisional management, since Sherley was merely a trusted, highly regarded, rank-and-file employee, whom her fellow workers could not, reasonably, consider a reliable, authorized conduit for messages directed to superiors. The record, however, reveals that Sherley, functioning as Respondent's designated ad service supervisor, routinely "oversaw" classified copy control, and the advertising department's dispatch section. She was—further—responsible for noting, and reporting, job problems; for giving "advice" which fellow workers with work-related problems might solicit; for reporting job-related employee deficiencies or deviations from acceptable office practice; and for reporting situations when she considered a particular employee's workload excessive. With matters in this posture, Sherley's fellow employees—within my view—could reasonably consider her a proper conduit for messages, during this period, dealing with matters of presumptive managerial concern. Indeed, during the June 2 meetings, held shortly thereafter, Dilbeck did—essentially—confirm Sherley's status as her surrogate for required communications; Respondent's employees were—so I find—told that when required to absent themselves because of illness or some emeregency doctor's appointment they could call Owens, Sherley, or Dilbeck herself.

Later that day, when Dilbeck asked her why she could not stay, Anderson declared—so her credible testimony shows—that she would be visiting a chiropractor. At 5 p.m., the copy control clerk notified Dilbeck that she was leaving to see Karen Boring's chiropractor, specifically.

Boring, who had been present, credibly corroborates Anderson's testimony that Dilbeck was so advised, and that she merely acknowledged the communication, making no comment that Anderson "could not go" or, conversely, that she would be required to remain. With matters in this posture, Dilbeck's witness-chair denial that she was notified regarding Anderson's projected departure—within my view—merits no credence.

Accompanied by Boring, Anderson then left to attend the Association meeting which had been previously arranged. There, consensus was reached that a designation card campaign should be initiated within Respondent's advertising department employee complement.

With Anderson's consent, those present decided—further—that she would function as the Association's primary solicitor of signed designation cards, within the classified advertising division, since her job duties required frequent contacts with her fellow employees

during their working day and since she was reachable, in Respondent's office, most of the time. The copy control clerk agreed to solicit designation card signatures, to collect any signed cards, and to transmit them to the Association's counsel.

On Wednesday, May 27, Anderson commenced her solicitations. In toto, she collected six signed cards that day; one of these, however, was her own designation card. While a witness, Anderson testified, further, that she attended a second Association "meeting" held the same day; the record—considered in totality—warrants a determination, nevertheless, that during May 27's evening hours, she attended a primarily social gathering at Howard Johnson's motel in San Luis Obispo; while there—however—with help from two fellow employees, she solicited and collected the last of her six signed cards, from another departmental colleague.

According to Anderson, she had neither been expected, nor required, to work overtime on Wednesday, May 27, because her personal VDT stint for the day had been completed. While a witness, Dilbeck testified, however, that during a daytime conversation Anderson had reported she had an appointment and would have to leave at the end of her regularly scheduled shift. The classified advertising manager declared—further—that she had been "irritated" by Anderson's announcement, but that there was "nothing" she could do, since she could not tie Respondent's copy control clerk to her desk. Respondent's time records, which—particularly in Judy Sherley's case—seem to have been compiled retrospectively, post hoc, following each pay period's conclusion, rather than by daily recorded entries, suggest that Sherley, together with employees Eustace Chilton and Lisa Mercier, may have worked overtime that day. According to Dilbeck, she and possibly Respondent's production manager provided help. The record herein, however, provides no clue with respect to whether they were working to complete computer-related tasks which Anderson could have performed, or tasks for which she had not yet been trained.

There were no Association meetings held on Thursday, May 28, or Friday, May 29. Anderson worked overtime—so she testified, and so her time records show—on both of these evenings. During this 2-day period, further, she continued to solicit signed Association designation cards; she collected five or six from fellow workers. Of the 14 signed cards which the Association finally received from classified, ad service, and display division personnel, approximately 11 had been solicited by Anderson, personally or with some help. Throughout her 3-day solicitation period, Respondent's advertising department staff, within the three divisions previously noted, had compassed no more than some 20 or 22 nonsupervisory workers.

On Monday, June 1, the day on which Respondent received the Association's recognition demand, Anderson received no significant help from fellow workers—so she credibly testified—with respect to "punching in" currently active advertisements on Respondent's video display terminal.

The copy control clerk's testimony—which I credit in this connection—warrants a determination that throughout the week preceding Sherley and sometimes Dilbeck had helped her "punch in" advertisements during Respondent's regular working hours. On Friday, May 29, both Sherley and Dilbeck had worked overtime with Anderson; she testified herein—credibly and without contradiction—that their jointly performed tasks had been completed with "very friendly" relations, marked by good humor, maintained.

Since Anderson had received no significant VDT help during her regular working hours, while being required—concurrently—to discharge her routine "copy control" responsibilities, there developed a concededly substantial "backlog" of classified ads which someone, presumably, would have to "punch" into Respondent's computer for Tuesday, June 2's press run.

On June 1, however, Anderson was being contacted by several fellow workers, who "had questions and were very upset" with regard to Respondent's receipt of the Association's recognition demand letter. Responding to their concern, Anderson telephoned Association counsel and made arrangements for a meeting to be held that evening during which employees' questions might be answered. The meeting was scheduled to convene at 5:30 p.m. at a nearby San Luis Obispo restaurant. Anderson contacted "four or five" fellow employees during the afternoon, notifying them about the prospective gathering.

At some point, midway during this June 1 afternoon, Sherley advised Anderson—so the latter credibly testified—that she would not be able to work overtime that evening. Anderson reported that she would not be able to stay either; the copy control clerk spoke with no one else, however, regarding her inability to remain past her normal workday's conclusion.

While a witness, Dilbeck testified that she had not been apprised of Anderson's decision to leave work when her regular June 1 duty tour concluded. And, herein, Respondent contends that since Sherley was not, then, considered Anderson's de facto or de jure superior notice of the copy control clerk's intentions given to Sherley should not properly be considered "effective" notice to Respondent's concerned management representative. For reasons previously noted, within this decision, Respondent's contention—so far as I am concerned—carries no persuasion. Anderson testified, credibly, that she spoke to Sherley because she had "always" done so previously, and because Sherley—together with one other departmental employee—was the "only" person considered knowledgeable, generally, with respect to setting Respondent's advertisements.

Consistently with her notice, given to Sherley, Anderson left work at 5 p.m. Together with some 10 employees—7 of them from Respondent's classified advertising and ad service divisions—she attended the restaurant meeting. The Association's counsel was there; the meeting lasted 1-1/2 to 2 hours. Those present discussed Respondent's reaction to the Association's demand letter, the questions which management representatives had directed to employees with respect to whether they had signed anything, and how employees should react to such interrogation.

With Anderson's departure, however, Respondent concededly faced a substantial backlog of classified advertisements, submitted for publication, which would have to be processed through the firm's computer so that they could be timely prepared for reproduction and next day release. According to Dilbeck, whose testimony—particularly in this connection—stands corroborated by Respondent's time records, she and Sherley, together with employees Chilton and Mercier, worked overtime, for varying periods, that night. The record suggests—though it may not prove—that *all* classified advertisements left for VDT processing, when Respondent's regular workday concluded, were finally "punched in" by Dilbeck, together with her designated helpers.

(c) *Anderson's discharge*

Previously, within this decision, references have been made to Advertising Department Director Owens' several June 2 conferences with departmental personnel.

Later that day, however, shortly after the completion of Respondent's regularly scheduled shift, Anderson was again summoned to Owens' office. Dilbeck was present. Respondent's copy control clerk—according to her testimony—was told by Owens that Dilbeck had given him "termination papers" for her, but that he wanted to talk to her before he signed them.

The advertising department director then reportedly told Anderson that Dilbeck considered her job performance inadequate; he asked her whether she concurred. Anderson replied negatively. Dilbeck, however, proffered several reasons purportedly supportive of her conclusion. Inter alia, she declared—so the copy control clerk recalled—that Anderson had "left without telling her" three times within the previous week.

When Anderson protested that—certainly on the last occasion—she had notified Sherley, Dilbeck commented, merely, that Sherley was not her boss.

Dilbeck mentioned then that Respondent's lineage records for classified advertising salespeople had not been kept current since June 1's lineage had not been recorded. Anderson replied, so her testimony shows, that since she had been absent because of illness for some days during the previous month two other departmental employees had compiled Respondent's lineage figures, and that she (Anderson) had merely recorded lineage with respect to newly started advertisements. When Dilbeck complained that she could not find lineage figures for Respondent's display advertising salespeople, the copy control clerk reported that such figures could be found on a separate piece of paper. Dilbeck, nevertheless, repeated her complaint. At that point, so Anderson testified, she declared that she did not wish to say anything further until she procured legal counsel.

Owens, according to Anderson, thereupon queried Dilbeck with respect to whether she wanted the copy control clerk's termination effective immediately; the classified advertising manager declared—emphatically—that she did. With matters in this posture, Anderson left. Within 4 or 5 days, thereafter, she received a form letter, which Owens had signed, notifying her that she had been discharged for "non-performance of duty as assigned." No further specifications were vouchsafed by Respondent's management regarding their reasons for her termination.

(d) *Subsequent developments*

On Wednesday morning, June 3, Owens notified Dilbeck that—while having dinner with a departmental subordinate, following Anderson's termination—he had learned that many of the copy control clerk's fellow workers were "buzzing around" with speculation relative to Respondent's possible antiunion motivation for her discharge. The advertising department director and classified advertising manager decided that—for the purpose of alleviating possible employee fears, and getting them "settled down" ready to resume normal work routines—they should call a staff meeting to explain that Anderson had been terminated for failure to perform her duties, and that her forced departure had not been bottomed upon her Association sympathies or supportive activity.

Consistently with the pattern which they had previously established, employees were summoned to Owens' office in several discrete groups. There, Dilbeck told them "basically the same thing" during each meeting—namely, that Anderson had been discharged for failure to perform her job adequately; that her desk "had been a mess" for 2 months; that advertisements had been lost; that she (Anderson) had displayed a "bad attitude" lately; and that she had "refused to stay" the previous day though Sherley and employee Chilton had worked overtime—together with Dilbeck herself—setting advertisements. According to Karen Boring—whose testimony I credit in this connection—Dilbeck had declared, further, that she could not have her "authority" undermined like that; she could not have someone on her staff who would not perform the way she "expected" them to perform. When Dilbeck commented—during the course of her remarks—that Anderson's termination had been "unfortunately" timed, Owens agreed, but declared that they "felt" they had "no choice" but to let her go. The director concededly insisted that Andersons' discharge had "nothing to do" with the Association's recognition demand. On that note, these June 3 conference sessions were concluded.

However, some 15 or 20 minutes later—so employee Nielsen credibly testified—Dilbeck initiated a private conversation with her. Both were, then, in Director Owens' office. According to Nielsen, Dilbeck was upset; her voice was shaking. The classified advertising manager declared—so Nielsen recalled—that:

> [She] did not know that Jill was the one circulating the Union cards. She thought that it was Karen Boring. *She [said that she] went to Jill first when the Union cards were circulated and [she] said that she had to do what was right for the company* and that she hoped that this did not hurt our relationship and that she hoped that no one hated her. (Interpolations added to promote clarity. Emphasis added.)

At some point Dilbeck reportedly reiterated further that Anderson's discharge had "nothing to do" with the Association; that it had been effectuated pursuant to her

decision, and that neither Owens nor Sherley had been involved.

Some 4, or possibly 6 days later, on June 7 or shortly thereafter, employee Judy Shankle attended a social function, celebrating a fellow worker's 25th anniversary in Respondent's service. It was held within a local motel located some 7 or 8 miles from Respondent's facility. When it drew to a close, she gave Advertising Department Director Owens a ride, back to Respondent's plant where his motor car had been left.

During their drive, so Shankle testified, the subject of the Association's letter and the tension which it had generated was raised; Shankle recalled that Owens had raised it. She told Owens, so her testimony shows, that she felt management had "overreacted" when they received the Association's recognition demand. When Owens asked "in what way" management's overreaction had been manifested, the classified phone clerk cited his suggestion that bonuses might possibly be discontinued, plus his declaration that stricter work rules, personnel policies, and significantly formalized office procedures would forthwith be instituted. Shankle proclaimed her personal feeling that—since Respondent's employees had "hurt" management—spokesmen for the company would be disposed to "hurt [them] back" through rule modifications. Owens, however, defended Respondent's position, claiming that his projected rule changes had not been "meant" to serve as calculated reprisals. The departmental director contended, substantially, that his rule changes had been formulated to provide Respondent's employees with a demonstration of the more structured, less flexible, working relationships which would prevail within a unionized facility.

Shankle then stated—so her testimony shows—that she thought Anderson's discharge had been poorly timed; Owens agreed that it had looked bad. The phone clerk's testimony, with regard to his further remarks, reads as follows: "[He] told me that when they found out what she was doing the week before, instead of working overtime, they had to let her go."

Summoned as Respondent's witness, Owens conceded among other things that he had responded to Shankle's observation regarding Anderson's discharge with a comment that it was "really too bad" that she had felt her "outside activities" were more important than finishing her job. The advertising department director recalled—while testifiying herein that during the motor car conversation now under consideration his capsulized reference to Anderson's purported "outside activities" had neither been amplified nor explained. While testifying further, however, he claimed that he had been—subjectively—mindful of her prior "involvement" with the Brownies or Girl Scouts, her conceded and frequently manifested fascination with television soap operas, and her disposition to "party" or "have a drink" sometimes with fellow workers after working hours.

Confronted with Owens' tailored and patently qualified testimony, I find Shankle's proffered recollections—with respect to precisely what he said—more worthy of credence. The phone clerk testified with straightforward candor. Further, she proffered circumstantially detailed testimony, presumptively damaging to Respondent's case, while still in the newspaper enterprise's employ; this Board frequently finds testimony potentially damaging to concerned respondents, particularly worthy of credence when proffered by workers still employed by the firms or labor organization involved. Finally, I note that—while Owens' proffered recollections regarding the significant portion of his conversation with Shankle may differ *textually* from hers—those recollections reflect merely minor *substantive* differences. Mindful of these considerations, I find Owens' testimony sanitized, and Shankle's more detailed witness-chair recitals, previously noted, worthy of belief.

(2) Respondent's proffered rationale for Anderson's termination

As previously noted, Respondent's termination notice, with respect to Anderson's discharge, stated—badly—that she was being dismissed for "non-performance of duty as assigned" with no specific derelictions cited. However, Respondent's management representatives—within a series of documents, *subsequently prepared*, which their proffered witness-chair recitals, herein, recapitulate, qualify, and supplement—have provided numerous specifications regarding her purported work deficiencies and charged failures of performance.

(a) *Dilbeck*

While a witness, Respondent's classified advertising manager claimed that Anderson had left Respondent's premises on Tuesday, May 26, following the conclusion of her regularly scheduled duty tour without notifying her divisional supervisor (Dilbeck), personally or through a messenger though her primary responsibilities, concerned with the video display terminal "setting" of confirmed advertisements for next-day publication had not been completed. Dilbeck testified further that the copy control clerk had notified her—specifically on Wednesday, May 27—that she had an evening "appointment" and could not work overtime; Grigg's ad "setting" functions on Respondent's VDT equipment, which Anderson had been expected to perform, had thereupon been handled—so Dilbeck reported—by others. Respondent's divisional manager did concede that Anderson had worked "overtime" with help from some fellow workers on both May 28 and 29 to complete required VDT settings. She declared, however, that on Monday, June 1, Anderson had again left work at her regular quitting time without giving notice and with a substantial number of classified advertisements, still untouched, remaining for Dilbeck and several others to "punch in" through Respondent's VDT consoles. While a witness, Anderson's supervisor recalled that following the copy control clerk's departure she had been quite irritated. When describing her reactions, Dilbeck testified that Anderson had "just taken off and left" her fellow workers; that she had "dumped all her workload" on them; and that the copy control clerk had "completely dropped the ball" so far as she (Dilbeck) was concerned.

At this point, so Dilbeck reported, she concluded that she "could not put up with Jill any longer . . . this was

just the final straw that broke the camel's back." She decided that Anderson should be discharged.

On June 2, sometime during the morning, while conversing with Owens, Dilbeck reported her determination with respect to Anderson's dismissal. Thereafter, she conferred further with Blakeslee because of her concern regarding the possible impact which the Association's June 1 demand letter might have on her discharge decision.

During her conversation with Blakeslee, so Dilbeck recalled, she had conceded her realization that Anderson's termination, forthwith, would be badly timed; Blakeslee had, however, been told—so she testified—that she could not "put up with" the copy control clerk's "insubordination" further. Dilbeck had reported that, failing a discharge, she "would have an employee . . . that is just flaunting [sic] in my face direct orders."

Confronted with Dilbeck's report, Blakeslee concurred with her discharge decision. The classified advertising manager, thereupon, prepared a June 2 memorandum—directed to Advertising Department Director Owens—wherein she recommended Anderson's termination.

Dilbeck's memorandum, however, made no reference to her alleged "triggering" reason for the copy control clerk's dismissal. Nothing was said, therein, with regard to Anderson's June 1 departure, following the completion of her regularly scheduled duty tour, purportedly without notice, or with certain "required" job functions left undone. The memorandum, rather, reported generally—with respect to Anderson's work performance—that:

> Work habits do not meet requirements for position. After numerous counseling, [sic], with some improvement for a short time, the attitude, skill and quality of work is inadequate for the position . . . counseling and training have taken place during the 6 month period [since the employee's November 1980 transfer from Dispatch to Copy Control]. The results have been inadequate. (Interpolation supplied to promote clarity.)

When cross-examined, Dilbeck declared that her memorandum recommending Anderson's termination had been prepared at Owens' request; she testified—further—that it summarized the "factors" and "deficiencies" upon which her termination decision had been based. The classified advertising manager conceded that she had never, previously, prepared such a written memorandum, recommending discharge forthwith, when terminating employees subject to her supervision.

On various dates thereafter, pursuant to requests from her superiors, Dilbeck prepared a series of further memoranda. One summarized the several "events" which had led to Anderson's discharge. A second summarized purportedly relevant events which had taken place during the week preceding the copy control clerk's termination. Still a third listed Anderson's purported work deficiencies, which had—so Dilbeck charged—been manifested between her November 1980 reclassification and her date of discharge. A fourth memorandum, prepared pursuant to Blakeslee's direction particularly, listed purported problems which had been discovered following Anderson's termination. Finally, Dilbeck drafted another document—which Blakeslee had requested—because Respondent's business manager wanted factual documentation with respect to Anderson's purported "incompetence" during months when she worked subject to the classified advertising manager's direction. Dilbeck, so her testimony shows, had never previously been required to prepare comparable memoranda, when effectuating employee discharges.

(b) *Owens*

Summoned as Respondent's witness, Owens testified—consistently with Dilbeck's proffered recollection—that, late on Monday, May 26, he had "found out" that Anderson had departed the premises at her regular quitting time, leaving her job—setting classified advertisements at Respondent's VDT console—uncompleted. According to Owens, Dilbeck was directed to determine whether she had a good excuse, and further "make sure" that the situation was not repeated. On May 27, Dilbeck advised him—so he testified—that "everything was squared away." Dilbeck reported that there had been a lot of work; that Anderson had not been able to get to it, and had failed—so Dilbeck declared—to tell anyone she was leaving.

Two days later—on Thursday, May 28, according to Owens' recollection—Anderson left, again at her regular time, after telling "somebody" she was leaving. (Respondent's stipulated payroll records reflect Anderson's signed report that on May 28 she worked 1-1/2 hours overtime.)

Owens told Dilbeck—so his testimony shows—that "if she can't do it, she can't do it. That's fine, as long as she tells someone" regarding her projected departure.

On June 1, so Owens was reportedly told, Anderson left work again, without notifying anyone. The next morning, Owens declared, Dilbeck reported that Respondent's copy control clerk—when queried—had given "no reason" for her June 1 departure, leaving her assigned VDT tasks undone; the classified advertising manager was asked whether Anderson should be given "some sort of reprimand, termination or something." Dilbeck, so Owens testified, recommended the clerk's discharge.

At first, Respondent's advertising department head—so he testimonially claimed—demurred. Because Respondent had just received the Association's recognition demand, and because he did not—so he claimed—want some "correlation" drawn between that demand's receipt and Anderson's termination, he suggested that perhaps they should consider giving her a formal "final notice" warning instead. Owens and Dilbeck allegedly then consulted Blakeslee. According to Owens, Respondent's business manager asked whether they would have let Anderson go if Respondent had not received the Association's letter; when Owens responded affirmatively, Blakeslee declared that he would "let her go, and let's take the consequences."

When queried with regard to Anderson's termination interview, Owens reported: That the copy control clerk was called into his office after Respondent's regular

hours; that Dilbeck and he "went over what had happened" during the previous week; that Anderson was told they were "considering" her termination, unless she could produce some "valid reason" which would forestall such action; but that she declared, merely, her desire to consult counsel. Owens' testimony, with respect to his rejoinder, reads as follows:

> Well, I am trying to give you some sort of opportunity to say—was there something that prevented you from doing your work, *or at least not telling us that you couldn't complete your work, which was the main problem.* [Emphasis added.]

When Anderson merely reiterated her desire to see counsel, Owens told her her—so he testified—that he would have to terminate her. Concededly, he did so.

(c) *Blakeslee*

Respondent's business manager, summoned as Respondent's final witness, proffered a significantly different triggering reason for Anderson's termination. He testified: That on Monday, June 1, he had been notified—sometime close to 11 a.m. 1 hour before Respondent's press run was supposed to start—that there were more classified advertisements ready to run than available newspaper space within which they could be printed; and that he—together with Editor George Brand—had been required to direct necessary readjustments with respect to that day's space allocation for news stories and display ads, so that their unforeseen surplus of classified advertisements could be reproduced.

Blakeslee claimed that neither Advertising Department Director Owens nor Respondent's managing editor, who would normally have been responsible for dealing with the problem, had been in the building, or available. This was the morning, however, during which Respondent's editor had received the Association's demand letter. And, according to Owens, Blakeslee had told him about the Association's letter, sometime during June 1's mid-morning hours, during a face-to-face conference.

According to Blakeslee, Dilbeck had—shortly thereafter—been requested to determine why Respondent's advertising department had failed to provide a more closely calculated "estimate" regarding the total amount of classified ad space which Monday's paper would require.

On Tuesday morning, June 2, Dilbeck reported—so Blakeslee recalled—that their Monday morning problem had developed because Anderson had failed to maintain accurate, up-to-date records, particularly with regard to advertisements received the previous Thursday and Friday. The business manager testified that:

> . . . Pat was disturbed . . . and she described to me in some [sic]—very briefly—that she had had some problems with Jill and *felt that this was kind of the last straw*, that she had had some problems the week prior.

According to Blakeslee, when Respondent's classified advertising manager—not Owens, her departmental superior—declared a desire to terminate Anderson, because of her purportedly gross negligence, he concurred. He suggested, however, that she ought to discuss her problem with Respondent's advertising department head, and report back with her decision. Dilbeck, so Blakeslee testified, subsequently reported that a discharge decision had been reached. (Note: Blakeslee, while a witness, made no testimonial references to conferences with Owens, or with Dilbeck and Owens jointly, during which Anderson's possible discharge had been discussed.)

With matters in this posture, Blakeslee's version of the triggering event, which had generated Anderson's termination, referred to her purported May 28 or May 29 failure to provide a closely calculated, reliable estimate of Monday, June 1's probable classified advertising lineage, sufficiently "close" to facilitate proper allocations of news space and advertising space, for that day. No such reason was mentioned by Dilbeck within her subsequently prepared termination recommendation.

(3) Conclusions

Upon this record, the General Counsel's representative has clearly established Anderson's participation in protected concerted activity, functioning as the Association's principal employee protagonist throughout a brief—but significantly effective—designation card solicitation campaign.

Further, Respondent's reaction of surprise, shock, and concern—following Editor Brand's June 1 receipt of the Association's recognition demand—has been conceded. Respondent's business manager—so the record shows—communicated with his firm's labor counsel, Kevin Lundgren of the Western Newspaper Industrial Relations Bureau, shortly following his acquisition of knowledge regarding the recognition demand's receipt, admittedly for the purpose of soliciting advice with respect to management's response. Both Dilbeck and Owens were concededly upset. Respondent's advertising department head reported, candidly, that when Dilbeck and he discussed the Association's demand letter that morning they wondered "who possibly could be" involved; they speculated that since employees who were paid the least would "probably" be most interested in collective representation, there would "probably" be more people from Dilbeck's division than from Respondent's display advertising division or elsewhere committed.

The record, within my view, clearly warrants a determination, which I make, that management's concerns were—almost immediately—focused on speculation with regard to precisely who, among Respondent's advertising department employees, might be "responsible" for the Association's newly manifested interest with regard to their representation, particularly. While a witness, Blakeslee denied that he had declared a belief regarding Karen Boring's possible involvement; whether he had or not, the testimony proffered by the General Counsel's witnesses that Dilbeck had reported such a comment on his part merits credence within my view.

While a witness, Dilbeck conceded that she had spoken with copy control clerk Anderson, following her restroom conversation with Mooney because she was "still curious" and wanted to know what was happening;

she considered Anderson a particularly "social" person who provided a reliable "pipeline" through whom developments or situations affecting classified advertising division personnel might be ascertained. Thereafter, during a noontime, June 1, conversation with employee Nielsen, the classified advertising supervisor—directly or tangentially—revealed, I find, that she "knew" the whole classified advertising division, plus two named display advertising employees, had "signed" for Association representation. Nielsen's testimony with regard to Dilbeck's statement—which I credit—clearly reflects her superior's tacit confession that, regardless of precisely what she [Dilbeck] may have discovered, her inquiries had been pursued, and had produced information regarding a subject of managerial concern. I so find.

Within Respondent's brief, however, counsel contends that the General Counsel's representative has conspicuously failed to demonstrate management's predischarge knowledge, particularly, with respect to Anderson's personal participation in designation card solicitation. He suggests that:

> In light of [the] substantial evidence of unsatisfactory work performance by Margaret (Jill) Anderson, and in the total absence of proof of employer knowledge [regarding her Association activities], General Counsel has failed to make a prima facie showing of unlawful motivation [for her June 2 termination]. (Interpolations supplied to promote clarity.)

Upon this record, however, Respondent's foundational contention that management lacked predischarge "knowledge" particularly with regard to Anderson's Association connections, carries no persuasion. Several testimonial references, proffered in the General Counsel's behalf, convincingly demonstrate—within my view—that Respondent's advertising department supervisors had, indeed, developed a suspicion or belief, prior to the copy control clerk's discharge, that she was "somehow involved" personally with the Association's campaign, calculated to win representative status.

First: I note that Dilbeck, concededly shocked and visibly agitated following her acquisition of knowledge regarding the Association's recognition demand—with both a perceived motive and patent opportunity to pursue inquiries, calculated to produce responses, whereby she might learn the identity of Association sympathizers, and possibly Association protagonists—had, indeed, pursued such inquiries. And the record, considered in totality, clearly warrants a determination that her inquiries had produced information with regard to Association card signers. Going one step further, the General Counsel's representative, within her brief, suggests—cogently—that since Respondent's advertising department can reasonably be considered a so-called small plant for present purposes, management's knowledge particularly with reference to Anderson's concededly active participation in protected concerted activity, therein, may legitimately be inferred. See *Coral Gables Convalescent Home*, 234 NLRB 1198, 1199, and related cases, too numerous to cite, in this connection.

Though Respondent's newspaper enterprise, considered as a whole, can hardly be considered small, the firm's advertising department, housed within a circumscribed portion of Respondent's plant facility—with a personnel complement encompassing no more than 20–22 employees, some 13 of these subject to Dilbeck's direct supervision—may properly be deemed, within my view, sufficiently limited in size to warrant Board reliance, herein, upon its consistently maintained small plant doctrine.

Upon this record, I find merit in the General Counsel's contention. Though management's acquisition of direct "knowledge" regarding Anderson's role as the Association's principal designation card solicitor must, concededly, be circumstantially inferred, credible testimony—scattered throughout the record—fully supports a factual determination, which I hereby make, that Dilbeck's inquiries particularly provided Respondent's management representatives with some reason to believe that the copy control clerk's personal Association sympathies had been more than passively manifested. I note particularly, in this connection, Dilbeck's testimonial concession that, on June 1, she had noted Anderson's frequent conversations with fellow employees.

Second: My conclusions in this connection, further, derive from something more than presumptions, or theoretically supportable inferences, merely. Dilbeck's testimony reveals that Respondent's copy control clerk was the *only* person—within the group of departmental subordinates with whom she concededly spoke—who vouchsafed comments revelatory of some employee dissatisfaction with Respondent's currently maintained working conditions and pay practices. Concededly, Respondent's classified advertising manager drew inferences from Anderson's conversational remarks. She declared—while a witness—that, "then I was beginning to get the idea that, you know, hey." Considered in context, Dilbeck's testimonial interjection, though somewhat ambiguous facially, persuasively suggests—within my view—her realization that Anderson had, through her comments, revealed Assocation sympathies, and possibly her participation in that organization's campaign.

Third: Note should be taken of Advertising Director Owens' postdischarge comment to employee Judy Shankle, herein found, that "when they [Respondent's management representatives] found out what she [Anderson] was doing the week before instead of working overtime, they had to let her go." Within the 8-day period preceding her discharge, Anderson had attended one Association organizational meeting: solicited signatures for Association designated cards within private residences, on Respondent's premises, and during a public gathering, primarily social in character, conducted elsewhere; and finally attended a second organizational meeting which she, herself, had requested. Leaving aside—for the moment—whatever revelations Owens' remark might implicitly convey, with respect to Respondent's *motivation* for Anderson's dismissal, there can be no doubt that his statement clearly reveals Respondent's *acquisition of direct knowledge*, prior to her termination, regarding her personal participation in protected concerted activity.

When questioned regarding his conversational comment, Owens contended that he had, equivocally, cited the copy control clerk's never-specified "outside" activities generally; pressed to specify, while a witness, the *particular activities* regarding which he had, purportedly, been subjectively mindful, Respondent's advertising department director merely mentioned her previously manifested Brownie or Girl Scout concerns, her sustained fascination with televised "soap opera" programs, and her purported disposition to socialize frequently. Clearly, however, none of these, save possibly the last mentioned, could—really—have prompted her successive decisions to forgo "overtime" work on 3 of 5 consecutive working days; further, Respondent presently proffers neither testimonial or documentary proof that management representatives had considered *any* of these purported "outside" concerns, singly or in combination, responsible for her several decisions to leave work, following the conclusion of her regular hours, without working overtime.

While a witness, Anderson conceded that she, together with some of her fellow employees, frequently gathered for social evenings on Wednesdays and Thursdays at the San Luis Obispo's Howard Johnson motel, and that she had departed Respondent's premises to participate in such a gathering on Wednesday, May 27. The record, however, reflects her proffered recollection that—specifically on that date—her nominally assigned work, setting advertisements on Respondent's VDT console, had been *completed* during her regular duty hours; that she had *notified* Dilbeck she had a nonspecified evening "appointment" because of which she proposed to leave; and that Dilbeck had *neither directed, nor requested* her to remain. Further, the record reveals that while at Howard Johnson's she had pursued her Association card solicitation activities.

Upon this record, Respondent's present contention—that Owens' previously noted conversational comment, while he was a passenger in Shankle's car, should *not* be considered a *concession* that management representatives had acquired definite *knowledge* or *grounds for belief*, before her discharge, regarding Anderson's Association connection—carries no persuasive thrust.

Rather, with matters in their present posture, I find Respondent's possession of predischarge "knowledge" or "reasonable grounds for belief" with regard to Anderson's personal participation in several Association meetings, together with her designation card solicitations, persuasively demonstrated.

That Respondent's management representatives were—further—properly chargeable with legally cognizable "animus" directed toward Association supporters, generally, cannot be doubted.

Within her brief, the General Counsel's representative suggests that Respondent's course of conduct, generally, reflected a patently "high degree of hostility" presumptively bottomed on management's resentment because the Association had mounted a second campaign for representative status, concerned with a group of employees differentiated from those within the firm's editorial department. That characterization of Respondent's reaction, when Editor Brand received the Association's new recognition demand, might conceivably be considered overly broad. The record, however, clearly warrants determinations—which I have made—that concerned management representatives were notably disturbed, and that their concern, with regard to possible future developments, was freely manifested. (Note, in this connection, Dilbeck's distracted exclamation, "My God, you girls don't realize what is going to happen," with its vaguely phrased, but clearly implied, threat.)

Further, determinations have been made previously within this decision that Respondent's advertising department employees were threatened with work rule changes, and certain restrictive modifications of current personnel practices and routine office procedures. Concededly, threatened changes were proclaimed to bring about more "structured" working relationships, calculated to demonstrate what Respondent's employees might face, should they opt for Association representation. They derived, in short, from a purpose of reprisal, reflective of Owens' freely proclaimed "get tough" policy. Considered in totality, these manifestations of Respondent's reaction, when confronted with the Association's recognition demand, may not reflect virulent hostility. Clearly, however, they warrant characterization as reflective of Respondent's basically antiunion posture, coupled with management's determination to forestall employee self-organization, within the firm's advertising department particularly. Herein, therefore, they clearly warrant designation as manifestations of cognizable "animus" statutorily proscribable.

To recapitulate: Respondent's negative reactions—when confronted with the Association's claim that its representative status had been, or could be demonstrated, within a defined "bargaining unit" composed of advertising department personnel—were promptly manifested. Those reactions, inter alia, compassed Dilbeck's several displays of particular distress, her professions of concern with regard to possible or probable consequences, and her patent compulsion—purportedly sparked by curiosity—to query subordinates regarding their knowledge of the Association's recognition demand, their awareness of that organization's prior designation card campaign, and, inferentially, their possible personal participation therein. Respondent's negative reactions compassed—further—comments by Advertising Department Director Owens which clearly revealed his disposition to consider desires for collective-bargaining representation, manifested by advertising department workers, a serious personal affront, coupled with his several announcements dealing with new working rules, new personnel regulations, and significantly restrictive business office procedures which clearly conveyed a reactive "get tough" policy. In totality, these manifestations—chargeable to Respondent's management representatives—clearly reflect a readily recognizable animus, sparked by Association claims.

Within such a pervasively negative atmosphere, particularly charged with manifestations of managerial distress, marked with vocal professions of top-level displeasure, and characterized by pronouncements reasonably calculated to convey a generalized purpose of reprisal, Respondent's management representative, so I have found, discovered—or were given some persuasive

reasons to believe—that Margaret "Jill" Anderson was somehow actively "involved" with Association signature card solicitations.

As previously noted, Respondent contends, primarily, that Anderson could not have been terminated because of her Association sympathies or supportive activities, since her departmental supervisors had acquired no direct knowledge *prior to her termination*—beyond possible suspicion and conjecture—that she was so engaged. That suggestion has, however, herein been rejected. Respondent's defensive presentation, nevertheless, clearly reflects a fallback position—namely that, in any event, Anderson was really discharged solely because of her poor job performance. In the language of her termination notice, Respondent's counsel seeks a finding, herein, that Anderson was dismissed for her "non-performance of duty as assigned" since her three departures from Respondent's premises, with classified advertisements not yet punched into Respondent's computer, constituted the "immediate and precipitating cause" for her discharge.

Upon this record, I have not been persuaded. Respondent's purported justification for Anderson's dismissal—within my view—cannot withstand scrutiny for several reasons.

First: Though the copy control clerk's termination notice charges her, generally, with a failure to perform assigned duties, Respondent's management representatives have proffered significantly divergent testimonial and documentary claims, when called upon for specifications with regard to her purported derelictions.

For example, on June 2, when required to prepare a memorandum detailing her reasons for recommending Anderson's dismissal, Dilbeck merely cited the copy control clerk's generally poor work habits, plus unspecified deficiencies—manifested during the 6-month period following her designation as Respondent's copy control clerk—concerned with her attitude, lack of skill, and her work's purportedly poor quality. The classified advertising manager never referred—within her formal memorandum—to Anderson's several conceded failures to work overtime, or her purported failures to notify Respondent, twice within her final week, that she would be unable to remain beyond her regular hours. By way of comparison, Advertising Department Director Owens, while a witness, dwelt on Anderson's several reported failures to continue working overtime, with advertisements still to be processed through Respondent's VDT consoles. His testimony, however, suggests that—before June 1, when the Association's recognition demand was received—he was less perturbed by her departures with work purportedly left undone, than he was by her reported failures to give management timely notice regarding her plans.

Owens, so the record shows, cited Anderson's purported May 28 departure at her regularly scheduled time. He recalled that she had, then, told "somebody" she was leaving, and that—during a subsequent conversation with Dilbeck—he (Owens) had noted acquiescence regarding her failure to remain, while commenting, "That's fine, as long as she tells someone." In fact, Anderson had worked overtime on May 28; previously, on Wednesday, May 27, she had departed when her regular duty tour concluded, concededly after notifying Dilbeck personally.

Summoned as Respondent's final witness, Blakeslee proffered a completely different recital, regarding the supposed "trigger incident" which had—so he purportedly recalled—prompted Dilbeck's discharge recommendation. He referred to the classified advertising manager's Tuesday, June 2, morning report—following a Monday, June 1, investigation which he had purportedly requested—that a discovered shortage of available June 1 newspaper lineage space, required to print advertisements which had theretofore been scheduled to run, had developed because Anderson had previously failed to provide a closely calculated, reliable "estimate" regarding the total lineage space which would be required. According to Blakeslee, Dilbeck had called Anderson's poorly calculated "ad count" estimate grossly negligent; she had declared that it constituted "kind of the last straw" contributing to her recommendation that the copy control clerk should be dismissed. The situation which Blakeslee described, however, was never mentioned by Dilbeck, when she prepared her memorandum—shortly thereafter—recommending Anderson's discharge.

When concerned employees vacillate—while proffering their purportedly "rational and consistent" justifications for challenged terminations—inferences may, legitimately, be drawn that their real reasons derive from other, statutorily proscribed, considerations. See *Jackson Dairy Products Co.*, 258 NLRB 1266 (1981); *Steve Aloi Ford, Inc.*, 179 NLRB 229 (1969), in this connection.

Second: Further, considered on their merits, Respondent's several proffered justifications for Anderson's discharge—herein noted—carry no persuasion. With matters in their present posture, no determinations would be warranted, within my view, that the copy control clerk's superiors would—really—have terminated her, for those proffered reasons, absent their newly derived "knowledge" or "belief" that she had participated, actively, during the Association's freshly mounted campaign to win representative status.

While a witness, Respondent's classified advertising manager detailed several purported deficiencies with respect to Anderson's job performance; she testified, additionally, that Respondent's copy control clerk had been "counseled" on various occasions, subsequent to her November 1980 designation, regarding such deficiencies.

The copy control clerk, when queried with respect thereto, recalled some counseling sessions, or conversations, during which she had been advised to discharge her regular responsibilities more expeditiously, or maintain a more orderly, less "disorganized" desk. There were, however, purported sessions or conversations cited by Respondent's classified advertising manager, which Anderson could not recall.

In substance, however, Dilbeck had previously declared—within her June 2 termination memorandum—that Anderson should be discharged for general incompetence, or lack of ability, which rendered her incapable of job performance calculated to satisfy Respondent's standards. Nothing within the present record, however,

would warrant a determination that Anderson was *ever* told her purportedly poor work habits, rule infractions, lack of ability, or purported failures to keep current, daily, with her regularly designated tasks might lead to her discipline or discharge. Compare *Mark I Tune-Up Centers*, 256 NLRB 898 fn. 2 (1981). Rather, Respondent's classified advertising manger—when confronted with Anderson's complaints, seconded by some of her fellow workers, that her multiple routine duties were too time-consuming and burdensome—had taken steps to provide the copy control clerk with help. Another clerical worker, Colleen Shannon, had been designated to assist Anderson with filing, generally, whenever her work left her with free time; likewise, the copy control clerk's nominal responsibility for maintaining advertising "lineage" records had finally been shifted to still another colleague.

Further, Respondent's conceded readiness to grant the copy control clerk a final so-called merit increase pay raise, shortly before her termination, belies any present contention, within my view, that Respondent—then—really held her services in low regard. Within her brief, the General Counsel's representative notes, cogently, that:

> It is highly unlikely that Respondent, a scant two weeks prior to her discharge, would give Anderson a raise, in part, because she was going to be assuming new job responsibilities, if it had not considered her a valuable and productive employee.

This observation, within my view, carries persuasion. Respondent contends that Anderson was given a raise, primarily, to provide some "incentive" for her to maximize performance levels. The copy control clerk, however, testified—contrariwise—that she had been previously *complimented* with regard to her work, and that she had been *told* she was getting a raise because Respondent was *satisfied* with her performance. In this connection, Anderson's testimony—within my view—merits credence. Should this Board, nevertheless, consider a determination warranted that the copy control clerk was, indeed, given a raise because Respondent's management had decided to provide her with some hopeful "incentive" calculated to stimulate better day-to-day performance, such a managerial decision would necessarily have been bottomed on judgments that her services had up to that point been—at the very least—satisfactory, and that she was considered *capable* of handling the new temporary responsibilities which she had been given.

Next, I note, particularly with respect to Owens' differentiated contention that Anderson was terminated, primarily, for her several purported "refusals" to work overtime—or, alternatively, for her purported failures to give "notice" before leaving work at her regular quitting time—that Respondent's currently cited premises for its June 2 decision to dispense with her services lack substantial, reliable, and probative record support.

Respondent's regular "Employment Understanding" notice, routinely given newly hired or reassigned workers, stated clearly—consistently with its generally published "Employment Information" sheet—that employees "are not to work overtime" save pursuant to "orders" received from "management" or their "department head" specifically. Respondent's several witnesses, herein, have proffered no testimony, however, that Anderson was ever directly "ordered" to remain following the completion of her regularly scheduled hours to help "set" classified advertisement for subsequent publication.

Dilbeck's testimony reflects her recollection that when Anderson was told she would have to take over responsibility for Grigg's work temporarily she was advised, merely, that overtime work would "probably" be required. The classified advertising manager, however, conceded—while a witness—that since Respondent had not yet switched completely to computerized operations when processing classified advertisement, she had not, then, been certain and could not have predicted how quickly such ads could be "set" or "punched in" by VDT operators. Hence, her comment that some overtime work might be required had—admittedly—been tentative. And Dilbeck never testified that Anderson had subsequently been directed, specifically, to continue working following the completion of her regular working day whenever classified ad schedules for next-day publication remained unprocessed.

Thus, when Respondent's classified advertising manager, according to her testimony, told Business Manager Blakeslee, on June 2, that Anderson had been insubordinate and that she, Dilbeck, could no longer tolerate someone who was flouting—not flaunting—direct orders, she was clearly overstating the situation. Dilbeck's proffered recollections, particularly with regard to her purported conversation with Anderson on Wednesday, May 27, reveal that when the copy control clerk reported she had a nonspecified "appointment" that night, and would have to leave when her regular duty tour ended her superior, Dilbeck, reportedly felt irritated, but concluded, nevertheless, that there was "nothing" she could do. Certainly, Anderson was, concededly, never told—then, or at any other time, before she was terminated—that she would be vulnerable to discharge if she did not work overtime.

With matters in this posture, the record—herein—warrants determinations, which I make, that Anderson's May 26-June 1 late afternoon departures from Respondent's facility may, indeed, have "irritated" her superior. They may have, further, dismayed and discomfited some of her fellow workers, who continued to work, voluntarily or pursuant to request, handling Respondent's VDT work. I am satisfied, however, that Anderson's failure to continue working did not prompt Respondent's management representatives to consider the copy control clerk's possible discharge, prior to their June 1 determination that she was somehow personally "involved" with the Association's newly disclosed organizational campaign, and particularly their June 1 or June 2 discovery regarding "what she was doing" within the week previous, instead of working overtime. That these discoveries *crystallized* management's reaction, and *precipitated* Respondent's decision that Anderson's perceived derelictions warranted discharge cannot—upon this record—be doubted.

Advertising Department Director Owens' witness-chair suggestion that Anderson's reported "failures to give notice" before leaving Respondent's premises contributed to management's decision that she deserved discharge derives, likewise, from mistaken factual premises. Respondent's classified advertising manager may, conceivably, have notified her departmental superior that Anderson had given no timely notice before leaving Respondent's facility on Tuesday, May 26, and Monday, June 1, at her regular quitting time.

The fact that she informed Dilbeck she had a postwork "appointment" before she learned whether Wednesday, May 27, overtime work, on her part, would or would not be required seems to have been conceded.

If so, Dilbeck was, so I have found, forgetful or mistaken. Credible testimony—previously noted herein—supports Anderson's claim, within my view, that, in fact, she first notified Judy Sherley sometime during May 26's day shift regarding her prospective "on time" departure, and that she reiterated her announcement while Karen Boring was present during a later afternoon conversation with Dilbeck, personally. On June 1, so Anderson testified, she likewise gave Sherley notice that she would be leaving work at her regularly scheduled departure time. Despite Sherley's failure to recall such a notification—while testifying herein—I have, heretofore, found the copy control clerk's proffered recollection credible. Further, despite Respondent's contrary contention, I have found Anderson's report to Sherley sufficient to put Respondent's management on notice regarding her plans. In short—regardless of what Owens now claims to have believed—that copy control clerk could not, legitimately, have been considered absent "without prior notice" given, preceding her May 26 and June 1 departures, particularly.

Blakeslee's testimonial contribution to Respondent's proffered fault list, detailing Anderson's purported failures of performance, may have been or may not have been contrived. Nothing within the record—as I view it—would warrant a determination either way. Whatever the factual situation—however—there can be no doubt, within my view, that the copy control clerk's purported May 28 or May 29 failure to provide a more closely calculated "ballpark" estimate, relative to June 1's prospective classified ad lineage requirements, contributed nothing whatsoever to Respondent's June 2 discharge decision. Neither Dilbeck, who recommended Anderson's discharge, nor Owens, who effectuated her termination, cited her purportedly faulty estimate when she was dismissed; nor did they cite it, herein, when trying—retrospectively—to justify her discharge. Upon this record, I am satisfied that Blakeslee's testimony, critically reviewed, reflects his determination, merely, "to pile Ossa upon Pelion"; clearly he was trying to contribute something "extra" with which—shifting metaphors—he hoped to tip the scales, presumably in Respondent's favor. Such testimonial "overkill" when proffered, suggests—persuasively—that its proponent really feels his course of conduct, *without the proffered testimony's purely makeweight thrust*, might be considered reflective of some statutorily proscribed motivation. So viewed, Blakeslee's testimony—within my view—detracts from, rather than promotes, Respondent's defense.

Third: Respondent's purported rationale for management's decision that Anderson's faults really deserved termination likewise falls—when scrutinized—because, as the General Counsel's representative, herein, persuasively notes her discharge:

> . . . was discipline of a far greater magnitude than Respondent imposed on other employees for infractions of a far more serious nature than those attributed to Anderson.

Several cases of disparate treatment can be found—discussed briefly—within the present record. For example: Within Respondent's display advertising division, employee Peter Kusar was discharged shortly following Anderson's termination. Kusar had failed to report for work—*for 3 days*—without notifying his advertising department superiors; nevertheless, *he was neither terminated nor otherwise disciplined* for this delinquency.

While a witness herein, Owens declared—with respect to Kusar's situation—that "being gone a couple of days to get your head straight" without giving notice would not be questioned. As the General Counsel's representative notes, however, Anderson had—by contrast—merely failed to work *requested, but nonmandatory, overtime*, beyond her normal work hours. Her termination, forthwith, can only be attibutable to Respondent's antiunion posture. See *Moore Co.*, 264 NLRB 1212 (1982); *United States Gypsum Co.*, 259 NLRB 1105 (1982), in this connection.

The display advertising worker was finally terminated when he falsely reported several full-page ads as sold advertisements, when—in fact—they had not been sold; Respondent had been directed to "write them off" as business losses. When employee Pollock failed to perform her regular job functions satisfactorily, Respondent gave her a so-called final notice rather than effectuate her termination. And, when employee Colleen Shannon likewise failed to satisfy Respondent's performance standard, management transferred her to a less demanding position and gave her a small raise, rather than terminate her. Such examples reveal Respondent's general toleration for work rule infractions and job performance failures; upon this record, they suggest—rather clearly—that Anderson's disparate treatment at management's hands could only have been derived from considerations statutorily proscribed.

Fourth: Respondent's several proffered business-related justifications for the copy control clerk's termination merit rejection—further—because the firm's management, when confronted with Anderson's purported derelictions, concededly failed to follow a proclaimed "progressive discipline" policy.

Pursuant to that policy, employees considered deserving of discipline are first given a verbal warning, followed by a second warning should their problem continue. Following a third warning, Respondent's management may, within its discretion, terminate the worker concerned or provide a final notice.

No explanation or justification for Respondent's failure to follow its regular disciplinary procedures with respect to Anderson's situation has been proffered herein. Inferences would certainly seem to be warranted, upon this record, that Respondent's prompt discharge action derived from stautorily forbidden motives.

Fifth: Note should be taken, finally, with respect to Advertising Director Owens' relevant postdischarge admission that Anderson's so-called outside activities had dictated her dismissal. Judy Shankle's testimony that Owens had, during their conversation, described Respondent's commitment to "let [Anderson] go" when management found out "what she was doing the week before" instead of working overtime clearly reflects a tacit concession, despite its Aesopian phraseology, that the copy control clerk was terminated because of her participation in protected concerted conduct. Compare *Farmland Soy Processing Co.*, 265 NLRB 836 (1982), in this connection. As such, the advertising department director's remarks cap and confirm the several determinations, previously noted herein, that Anderson was terminated by Respondent's concerned management for statutorily proscribed reasons.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

Respondent's course of conduct set forth in section III, above since it occurred in connection with Respondent's business operations noted in section I, above—had, and continues to have, a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States. Absent correction, such conduct would tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

In view of the factual findings and conclusions set forth hereinabove, and on the entire record in this case, I make the following

CONCLUSIONS OF LAW

1. Respondent Telegram-Tribune Company is an employer within the meaning of Section 2(2) of the Act, engaged in commerce and business activities which affect commerce within the meaning of Section 2(6) and (7) of the Act, as amended.

2. Telegram Tribune Editorial Employees Association is a labor organization within the meaning of Section 2(5) of the Act.

3. When Respondent, through Classified Advertising Manager Dilbeck, questioned employees with regard to their knowledge of the Association's demand for recognition as their collective-bargaining representative, and whether they had signed cards designating that organization as their representative for collective-bargaining purposes, the firm interfered with, restrained, and coerced employees with respect to their exercise and enjoyment of rights statutorily guaranteed. Thereby, Respondent engaged, and continues to engage, in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

4. When Respondent, through Advertising Department Director Owens and Classified Advertising Manager Dilbeck, told employees: That their salaries would, or could, be frozen and continue frozen throughout any period of negotiation, which might ensure, looking toward a collective-bargaining contract covering their wages, hours, and working conditions; that previously approved pay raises and raises currently being considered would, likewise, be frozen; and that various changes in Respondent's work rules, personnel practices, and routine office procedures would be effectuated in response to their supposedly demonstrated desire for more "structure" with respect to their working relationship; the firm further interfered with, restrained, and coerced employees with respect to their exercise and enjoyment of rights statutorily guaranteed. Thereby, Respondent's management further engaged, and continues to engage in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

5. When Respondent, functioning through Owens and Dilbeck, terminated Margaret "Jill" Anderson and subsequently failed or refused to reinstate her because of her involvement with, or participation in, Association activities, or other protected concerted activities, for the purpose of collective bargaining and other mutual aid or protection, the firm discriminated, and continues to discriminate, with regard to the hire and tenure, or terms and conditions of employment of Respondent's employees for the purpose of discouraging their Association membership, and further interfered with, restrained, and coerced employees, generally, with respect to their exercise and enjoyment of rights statutorily guaranteed. Thereby, Respondent engaged, and continues to engage, in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Since I have found that Respondent has committed, and has thus far failed to remedy, certain specific unfair labor practices which affect commerce, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action, including the posting of appropriate notices, designed to effectuate the policies of the Act.

Specifically, I have found that Section 8(a)(3) and (1) of the statute was violated when Respondent dismissed Margaret "Jill" Anderson, for statutorily forbidden reasons. I shall, therefore, recommend that Respondent be required to offer her immediate and full reinstatement to her former position or, should that position no longer exist, to a substantially equivalent position without prejudice to her seniority or other rights and privileges.

When this case was heard, Respondent's classified advertising manager testified that—since Anderson's termination—the departmental complement directly subject to her supervision has been significantly reduced. Further, it appears that various copy control clerk functions which Anderson performed prior to her discharge may have—since then—been circumscribed, reassigned, or transformed into functions which Respondent's computer currently handles. Should Respondent hereafter establish—during compliance negotiations or formal proceed-

ings concerned herewith—that Anderson's full-time position no longer exists, and that no substantially equivalent position may be currently available, Respondent should be required to list her as a preferential applicant for such work, and thereafter offer her reinstatement when a substantially equivalent position does become available.

Respondent should, further, be required to make Anderson whole, for any losses or pay benefits which she may have suffered, or may hereafter suffer, by reason of the discrimination practiced against her, by the payment to her of a sum of money equal to the amount which she would normally have earned as wages, from the date of her discriminatory termination, herein found, to the date on which Respondent may, hereafter, offer her reinstatement, or alternatively, to the date of her placement on Respondent's preferential hiring list, hereinabove prescribed, less her net earnings during the period designated.

Whatever backpay Anderson may be entitled to claim should be computed by calendar quarters, pursuant to the formula which the Board now uses. *F. W. Woolworth Co.*, 90 NLRB 289 (1950). Interest thereon should likewise be paid, computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977); see generally *Isis Plumbing Co.*, 138 NLRB 716 (1962), in this connection.

Though Respondent's course of conduct, particularly with respect to Anderson's termination, goes to the "heart" of the statute, that course of conduct—considered in totality—reveals no determinated proclivity, within my view, to violate the Act, generally; nor does it reflect such egregious or widespread misconduct as to demonstrate a pervasive disregard for the fundamental statutory rights of Respondent's employees. See *Hickmott Foods*, 242 NLRB 1357 (1979). Compare *L. A. Baker Electric*, 265 NLRB 1579 fn. 2 (1982), in this connection. Under the circumstances, no broadly phrased cease-and-desist order, herein, seems warranted.

On the findings of fact and conclusions of law and the entire record, I issue the following recommended

ORDER[1]

The Respondent, Telegram-Tribune Company, San Luis Obispo, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interfering with, restraining, or coercing employees with respect to their exercise or enjoyment of rights which Section 7 of the statute guarantees; by questioning them with respect to their knowledge of Association activities, or their participation in such activities; by threatening that their salaries would, or could, be frozen throughout any period of negotiation, looking toward a collective-bargaining agreement, which might ensue, or that previously approved pay raises, and pay raises currently being considered, would likewise be frozen; by declarations that various changes in work rules, personnel practices, and routine office procedures would be effectuated in response to their supposedly demonstrative desire for more "structure" with respect to their working conditions; or by any like or related statements or conduct.

(b) Discharging or laying off employees, or discriminating in any manner with regard to their hire or tenure of employment, because they may have designated Telegram Tribune Editorial Employees Association, or any other labor organization, as their representative for collective-bargaining purposes, or because of their participation in concerted activities, for the purposes of collective bargaining or other mutual aid or protection.

2. Take the following affirmative action which will effectuate the policies of the Act, as amended.

(a) Offer Margaret "Jill" Anderson immediate and full reinstatement to her former position or, if that position no longer exists, to some substantially equivalent full-time position, without prejudice to her seniority and other rights and privileges.

(b) Should a substantially equivalent full-time position for Anderson not be currently available, list her for preferential rehire in the manner and to the extent set forth within the "Remedy" section of this decision.

(c) Make whole Margaret "Jill" Anderson for any losses of pay and/or benefits which she may have suffered, or may suffer, because of the discrimination practiced against her, plus interest, in the manner and to the extent set forth within the "Remedy" section of this decision.

(d) Preserve, until compliance with any backpay or make-whole order which the Board may issue in this proceeding and, on request, make available to the Board and its agents for examination and copying, all their payroll records, social security payment records, timecards, personnel records and reports, and all other records relevant and necessary to reach determinations with respect to the make whole amounts of backpay due under the terms of this Order.

(e) Expunge from its files any reference to the June 2, 1981, termination of Margaret "Jill" Anderson, and notify her in writing that this has been done, and that evidence of the discriminatory action noted will not be used as a basis for future personnel action against her.

(f) Post, within Respondent's San Luis Obispo, California facility, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by Respondent's authorized repesentative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to Respondent's employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[2] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(g) Notify the Regional Director for Region 31 in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing, during which all parties were given an opportunity to present evidence and argument, it has been determined that we violated the law by committing unfair labor practices. In order to remedy such conduct we are being required to post this notice. We intend to comply with this requirement, and to abide by the following commitments.

WE WILL NOT discharge or lay off employees, or discriminate in any manner with regard to their hire or tenure of employment, because they may have designated Telegram Tribune Editorial Employees Association, or any other labor organization, as their representative for collective-bargaining purposes, or because of their participation in concerted activities, for the purposes of collective bargaining or other mutual aid or protection.

WE WILL NOT interfere with, restrain, or coerce employees with respect to their exercise or enjoyment of rights with the National Labor Relations Act, as amended, guarantees: By questioning them with respect to their knowledge of Association activities; by threatening that their salaries would, or could, be frozen throughout any period of negotiation, looking toward a collective-bargaining agreement, which might ensue, or that previously approved pay raises, and pay raises currently being considered would likewise be frozen; by announcements that various changes in work rules, personnel practices, and routine office procedures would be made effective, in response to their supposedly demonstrated desire for more "structure" with respect to their working conditions; or by like or related statements or conduct.

WE WILL offer Margaret "Jill" Anderson immediate and full reinstatement to her former position—or, if that position no longer exists, to some substantially equivalent full-time position, without prejudice to her seniority and other rights and privileges. If a substantially equivalent full-time position is not immediately available, we will list Anderson for preferential rehire, whenever her former position or some substantially equivalent full-time position becomes available.

WE WILL make Margaret "Jill" Anderson whole for any pay losses and/or benefit losses which she may have suffered, or may suffer, because of the discrimination practiced against her, plus interest.

WE WILL expunge from our files any reference to the discharge of Margaret "Jill" Anderson, and WE WILL notify her in writing that this has been done and that evidence of her unlawful discharge will not be used as a basis for future personnel action against her.

TELEGRAM TRIBUNE COMPANY